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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

12 Katelin Pruitt and Lalaine Ortega,
13 individually and on behalf of all others
similarly situated,

14 PLAINTIFF,

15 v.

16 THE WET SEAL, INCORPORATED,
17 DEFENDANT.
18
19
20

CASE NO. _____

CLASS ACTION COMPLAINT FOR
VIOLATION OF THE “WARN” ACT

JURY TRIAL DEMANDED

21 **CLASS ACTION COMPLAINT**
22

23 Katelin Pruitt and Lorlaine Ortega (“Plaintiffs”) on behalf of themselves and
24 all similarly situated persons, alleges as follows:

25 **PRELIMINARY STATEMENT**

26 1. This case arises out of the abrupt and sudden announcement by The
27 Wet Seal, Incorporated (“Wet Seal” or “Defendant”) to close a large majority of its
28 retail stores (the “Closed Stores”). On January 7, 2015, Wet Seal closed 338 of its

1 retail stores without advance warning to its employees, immediately leaving
2 approximately 3,695 workers unemployed. This action is brought as a result of
3 Wet Seal's failure to provide its workers with the notification required under the
4 federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101, *et*
5 *seq.* (the "WARN Act"), and to recover appropriate relief to remedy this violation.

6 2. Through this action, Plaintiffs and other similarly situated former
7 employees of Defendant seek damages in the amount of sixty (60) days pay and
8 benefits, by reason of Defendant's violation of their rights under the WARN
9 Act. Plaintiffs and Class Members were employees of Wet Seal and were
10 terminated as part of a mass layoff and/or plant closing ordered by Defendant.
11 Wet Seal violated federal law by failing to give Plaintiffs and other similarly
12 situated employees of Wet Seal sixty (60) days notice as required by such laws.

13 THE PARTIES

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15 3. Katelin Pruitt is a former Wet Seal employee who worked at the North
16 Carolina store that is among those subject to the closure announced on or around
17 January 7, 2015. Plaintiff has been injured as a result of Wet Seal's conduct as
18 alleged herein.

19 4. Lalaine Ortega is a former Wet Seal employee who worked at the
20 Georgia store that is among those subject to the closure announced on or around
21 January 7, 2015. Plaintiff has been injured as a result of Wet Seal's conduct as
22 alleged herein.

23 5. Defendant, The Wet Seal, Incorporated, (hereinafter "Wet Seal") is a
24 Delaware entity headquartered at 26972 Burbank, Foothill Ranch, California. It
25 issues securities that are publicly traded on the NASDAQ exchange under the ticker
26 symbol "WTSL."

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JURISDICTION AND VENUE

6. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as this case is being brought under the WARN Act, 29 U.S.C. § 2101 *et seq.*

7. Venue is proper in this District because Defendant resides in this District, the Wet Seal headquarters are located in this District, and a substantial part of the events giving rise to Plaintiffs's claims occurred in this District.

FACTUAL BACKGROUND

A. The Rise and Fall of Wet Seal.

8. Defendant Wet Seal is a retailer that sells clothing to young women in malls nationwide. The company was founded in 1962 as a "bikini shack" in Newport Beach, California by Lorne Huycke as "Lorne's."¹ The company was incorporated as Wet Seal in 1990, after Huycke decided on the name change based on a comment made at a bathing suit fashion show.

9. Wet Seal operated three mall-based chains of retail stores under Arden B, Blink, and Wet Seal brands. Wet Seal acquired 237 Contempto Casuals from The Neiman Marcus Group in 1995, and had converted most 237 Contempto Casuals stores into Arden B stores by 1998 and others into Wet Seal stores by 2001. The remaining 237 Contempto Casual stores were converted into Blink stores in 2010. In 2014, Wet Seal announced it would be closing all of its Arden B stores by 2015.

10. Wet Seal claims that each of its stores is an average of 4,000 square feet. In 2014, there were 532 store locations, comprised of 478 Wet Seal stores

¹ Tracie Rozhon, *The Teenage Crush on Wet Seal Stores is so Over*, THE NEW YORK TIMES (September 3, 2004), http://www.nytimes.com/2004/09/03/business/03wet.html?_r=0.

1 and 54 Arden B stores, with 7,413 full and part-time employees. The majority of
2 the stores are located in California.

3 11. Wet Seal has been struggling for years. In April 2014, Wet Seal's
4 stock was priced at approximately \$3.00 per share, compared to its current \$0.11
5 per share. While its peak was around the late 1990s and early 2000s, Wet Seal
6 stock lost nearly 97% of its value in 2014, and about \$150 million in the past two
7 years. 2014 was the third year in a row that the company reported an annual
8 financial loss, with a drop from \$27.4 million in profits in 2013 to 14.3 million in
9 profits in 2014. In December, the company reported that it might have to file for
10 Bankruptcy protection, and soon after entered into a forbearance agreement with
11 its creditor, Hudson Bay Master Fund Ltd., which gives Wet Seal until January 12
12 to make a payment. Another clear sign of financial loss was when Wet Seal
13 announced the closure of all Arden B stores by 2015.

14 12. One reason behind Wet Seal's extreme financial losses and eventual
15 store closures is the failure to adhere to a consistent theme of clothing, as well as
16 aggressive competition from other similar, more popular retailers such as H&M
17 and Forever 21. Another major reason for Wet Seal's closings is maybe its
18 multiple replacements of the CEO. The CEO has been replaced three times since
19 2011, and the article quotes, "it's no wonder the company has struggled to find its
20 voice."² Finally, an overall decline in profits of other teen apparel retailers can be
21 contributed to Wet Seal's decline.

22 13. Despite strong evidence that Wet Seal was in steep decline, it
23 continued to keep its employees uninformed right up until they abruptly fired
24 3,695 of their employees. As discussed in part B, employees were told not to look
25 for other jobs and that the stores were simply remodeling.

26
27 ² Mallory Schlossberg, *5 Reasons Why Teen Retailer Wet Seal is Failing*, BUSINESS
28 INSIDER (December 23, 2014), <http://www.businessinsider.com/5-reasons-for-wet-seals-downfall-2014-12>.

B. The Store Closings on January 7, 2014.

14. On or around January 7, 2015, the Wet Seal issued a press release announcing the immediate closure of 388 retail stores.³ According to the press release, the Wet Seal decided to go forward with the store closures “after assessing its overall financial condition and the Company's inability to successfully negotiate meaningful concessions from its landlords.”⁴

15. The press release acknowledged that the store closures resulted in in the termination “of approximately 3,695 full and part-time employees.”⁵

16. While laying off a substantial amount of its work force, Wet Seal itself did not declare for Bankruptcy protection or cease its operations. To the contrary, the press release states that it “expects to [continue to] operate approximately 173 retail stores and its Internet business.”⁶ The closed stores “represented approximately 48 percent of its net sales for the nine months ending on November 1, 2014.”⁷ Wet Seal expects to continue to operate 173 retail stores.⁸ It has been reported that it is keeping stores open that are located on the West Coast.

17. Unsurprisingly, recently laid off workers at some Wet Seal stores were unhappy about being blindsided. Some workers responded to the company's actions by posting signs describing the way they were treated, such as the one that appears below:

³ http://files.shareholder.com/downloads/WTSLA/3811330367x0x801810/F3837E19-8201-4AB8-957C-BC40A00121AB/WTSL_News_2015_1_7_General_Releases.pdf (last visited Jan. 8, 2015).

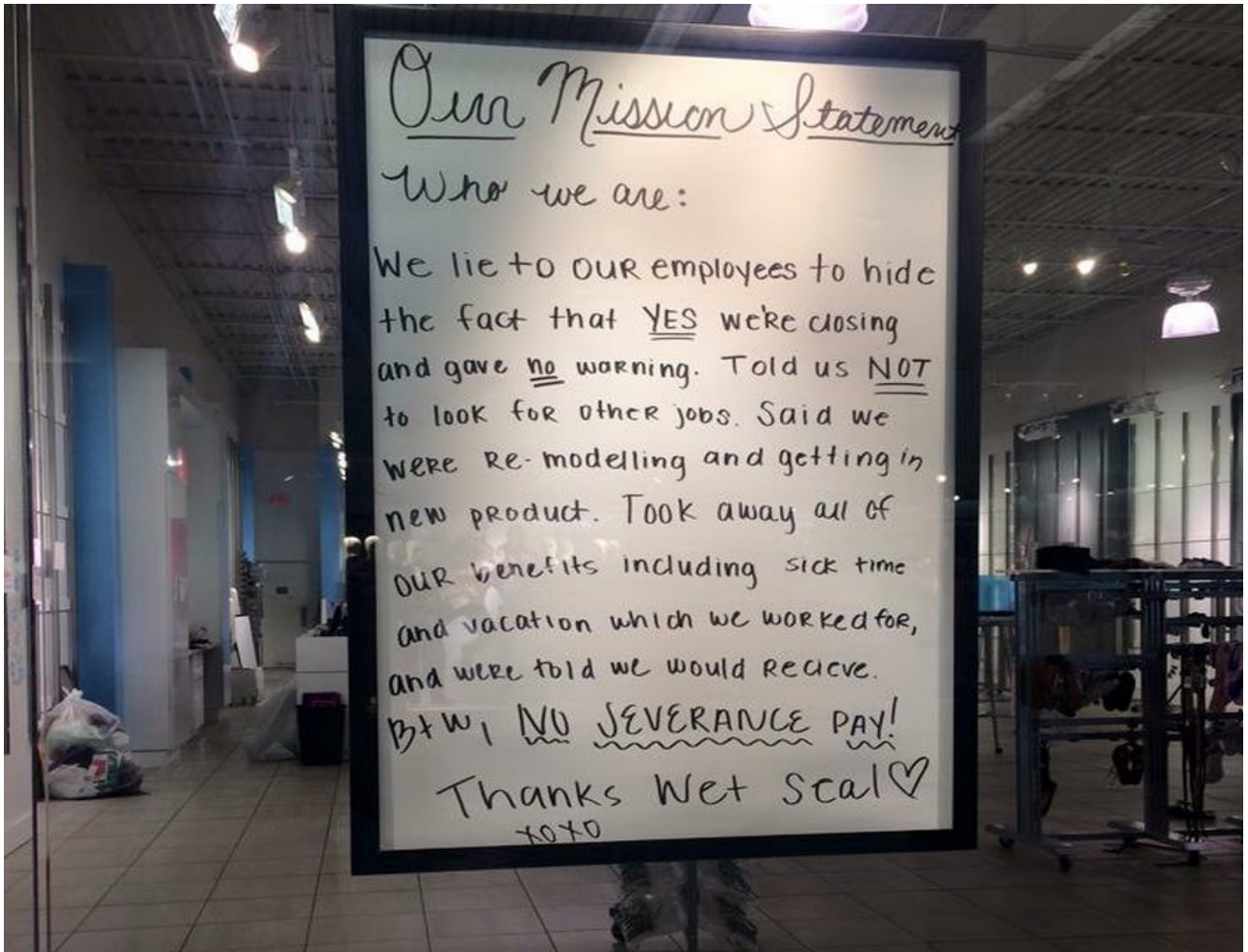
⁴ *Id.*

⁵ *Id.*

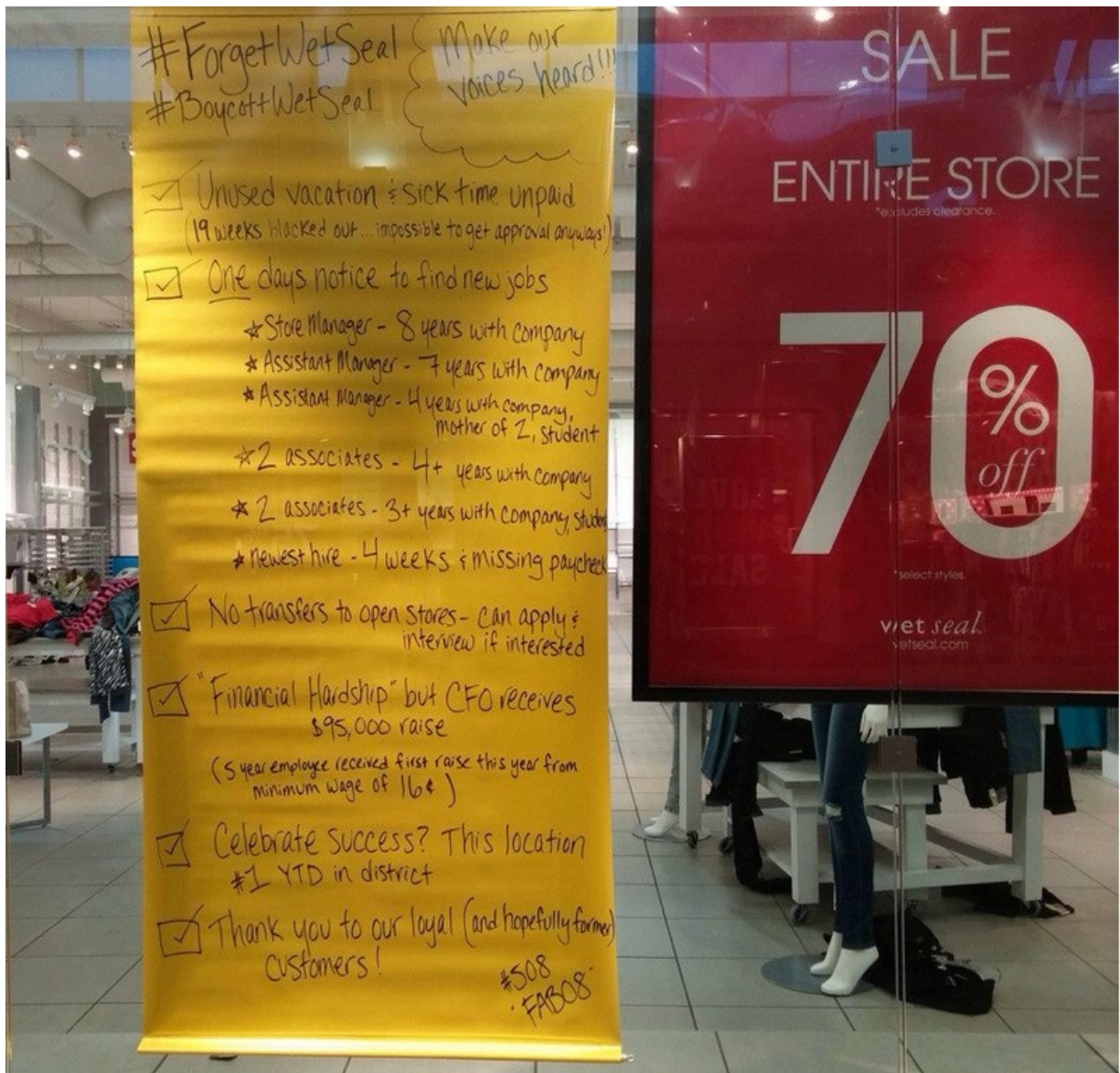
⁶ *Id.*

⁷ *Id.*

⁸ *Id.*



18. Another similar posting by recently terminated employees at a different store appears below:

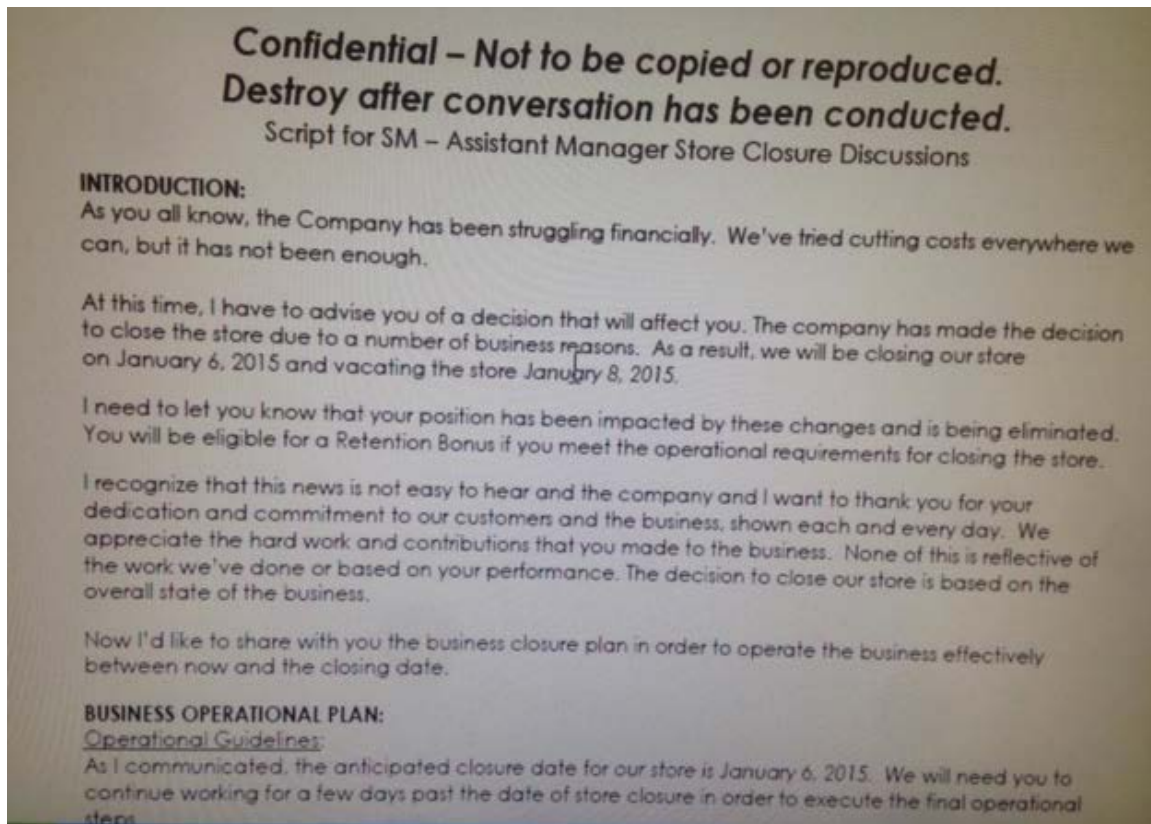


19. One article quotes a terminated employee named Kaitie Rosiu saying that she received ““Zero notice,” ... “It’s upsetting, it’s depressing. No one deserves to be jobless like that instantly.”⁹

20. Another article reproduced an image of a “Confidential” store closure discussion script to be used by Assistant Store Managers in advising employees that they would be abruptly terminated:¹⁰

⁹ <http://www.businessinsider.com/wet-seal-workers-tell-their-story-2015-1> (last visited Jan. 8, 2015).

¹⁰ <http://www.buzzfeed.com/sapna/one-days-notice-wet-seal-under-fire-for-surprise->



21. This same article claims that store managers and assistant managers were instructed to dial into a 2:30 p.m. conference call on Friday, [presumably January 3, 2015], without any knowledge of what the call would be about. District managers were then apparently told to deliver the news, and store personnel were left to inform associates they no longer had jobs.

C. Wet Seal's Violation of the WARN Act.

22. Plaintiffs and those she seeks to represent herein were discharged without cause on their part on or about January 7, 2015, as the reasonably foreseeable consequence of the mass layoff or plant closing ordered by Wet Seal, and are "affected employees" within the meaning in 29 U.S.C. §210l(a)(5).

23. The Closed Stores constitute a single site of employment within the meaning of the WARN Act because, *inter alia*, they all took uniform instructions from the same corporate Wet Seal headquarters, all held the same sales during the

[layoffs#.qlQOEBVQD](#) (last visited Jan. 8, 2015).

1 same times and sold merchandise at or around the same prices. A person buying a
2 product at one of the Closed Stores was free to return it to that or any other Wet
3 Seal store.

4 24. Plaintiffs brings this action on her own behalf, pursuant to the
5 WARN Act, and on behalf of all other similarly situated employees and former
6 employees whose employment was terminated on or about January 7, 2015.

7 25. Wet Seal terminated Plaintiffs's employment as part of a mass
8 layoff or plant closing as defined by 29 U.S.C. § 2101, for which Plaintiffs
9 was entitled to receive sixty (60) days advance written notice under the
10 WARN Act.

11 26. Wet Seal, as a single employer, did not give Plaintiffs the
12 statutorily required sixty (60) days notice of the mass layoff or termination in
13 violation of the WARN Act.

14 27. Plaintiffs and Class members were discharged by Wet Seal
15 without cause on their part, and are "affected employee(s)" within the meaning
16 of the WARN Act 29 U.S.C. § 2101(a)(5).

17 28. Upon information and belief, Defendant Wet Seal maintains a
18 vacation policy that applies to all of its employees. Through that vacation policy,
19 Plaintiffs and other employees accrued vacation as they worked for Defendant
20 Wet Seal.

21 29. Upon information and belief, Defendant Wet Seal failed and refused
22 to pay all employees, including Plaintiffs, for their accrued and unused vacation at
23 the time of employment termination.

24 30. Plaintiffs also seeks to recover any other accrued benefits to which
25 she and Class members are entitled as a result of Defendant's conduct, including
26 without limitation, any health insurance benefits and/or any retirement or 401(k)
27 benefits.

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CLASS ACTION ALLEGATIONS

31. Plaintiffs sues under Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Proposed Class:

All persons employed at Wet Seal's Closed Stores who were involuntarily terminated as a result of the layoffs announced on or around January 7, 2014, without the advanced notice required by the WARN Act.

32. Numerosity: The Proposed Class is so numerous that joinder of all members is impracticable. According to Wet Seal's press release, 3,695 employees were terminated.

33. Typicality: The Plaintiffs's claims are typical of the members of the Proposed Class. Plaintiffs, and proposed class members, were all involuntarily terminated by Wet Seal without proper notice under the WARN Act.

34. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

35. Adequacy: Plaintiffs and her counsel will fairly and adequately protect the interests of the Class. Counsel for Plaintiffs have extensive experience successfully representing Plaintiffss in complex class action litigation across the country.

36. Commonality: Common questions of law and fact exist to all members of the Proposed Class and predominate over any questions solely affecting individual members of the Proposed Class, including but not limited to whether:

- a. Defendant was a covered employer under the WARN Act;
- b. all class members were protected under the WARN Act;
- c. all class members' employment locations were covered facilities under the WARN Act;
- d. Defendant failed to provide at least sixty (60) days advance written notice to the class members, as required by the WARN Act;

1 e. Defendant failed to pay the class members wages and to provide
2 other employee benefits for the 60-day period following their respective
3 terminations; and

4 f. Defendant failed to pay or compensate class members for their
5 accrued vacation time.

6 37. This case is maintainable as a class action under FED. R. CIV. P. 23(b)(1)
7 because prosecution of actions by or against individual members of the Proposed
8 Class may result in inconsistent or varying adjudications and create the risk of
9 incompatible standards of conduct for Wet Seal.

10 38. This case is maintainable as a class action under FED. R. CIV. P.
11 23(b)(2) because Wet Seal has acted on grounds that apply generally to the Class,
12 such that final injunctive relief or corresponding declaratory relief is appropriate as to
13 the entire Class.

14 39. Class certification is also appropriate under FED. R. CIV. P. 23(b)(3)
15 because questions of law and fact common to the Proposed Class predominate over
16 any questions affecting only individual members of the Proposed Class, and because
17 a class action is superior to other available methods for the fair and efficient
18 adjudication of this litigation. In addition, class certification is superior because it
19 will avoid the need for unduly duplicative litigation that might result in inconsistent
20 judgments about Wet Seal's practices.

21 40. Further, class action treatment of this action is authorized and
22 appropriate under the WARN Act, 29 U.S.C. § 2104(a)(5), which clearly provides
23 that a Plaintiff seeking to enforce liabilities under that statute may sue either on
24 behalf of his or her self, for other persons similarly situated, or both.

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CLAIM FOR RELIEF

VIOLATION OF THE WARN ACT

41. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

42. At all times material herein, Plaintiffs, and similarly situated persons, have been entitled to the rights, protections, and benefits provided under the WARN Act, 29 U.S.C. § 2101 *et. seq.* Plaintiffs and members of the Class are "affected employees" of Wet Seal within the meaning of 29 U.S.C. §2101(a)(5).

43. Wet Seal is and was an "employer" as that term is defined in 29 U.S.C. § 2101(a)(1) and 20 C.F.R. § 639.3(a). Wet Seal employed more than 100 employees who in the aggregate worked at least 4,000 hours per week exclusive of hours of overtime within the United States.

44. On or about January 7, 2015, Wet Seal ordered a "mass layoff" or "plant closing" of the Closed Stores, as those terms are defined in 29 U.S.C. § 2101(a)(2),(3).

45. Plaintiffs are informed and believes and thereon alleges that the mass layoff or plant closing at the Facilities resulted in "employment losses," as that term is defined by 29 U.S.C. § 2101(a)(2) for at least 50 of Wet Seal's employees as well as 33% of Wet Seal's workforce at each of the Facilities, excluding part-time employees as that term is defined by 29 U.S.C. § 2101(a)(8).

46. Plaintiffs and each of the other members of the Class were discharged by Wet Seal without cause on their part.

47. Wet Seal failed to give Plaintiffs and other members of the Class written notice that complied with the requirements of the WARN Act.

48. Plaintiffs and each of the other Class members are "aggrieved employees" of Wet Seal, as that term is defined in 29 U.S.C. §2104(a)(7).

49. Wet Seal failed to pay Plaintiffs and each of the Class members their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued

1 vacation pay for 60 days following notice of their terminations and failed to pay
2 accrued retirement benefits, for 60 days following notice of their respective
3 terminations. Plaintiffs has been injured as a result of these WARN Act violations.

4 50. Wet Seal is also liable to Plaintiffs for reasonable attorneys' fees under
5 29 U.S.C. § 2104.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs on behalf of themselves and all members of the
8 Class, request the following relief:

- 9 A. That the Court determine that this action may be maintained as a class
10 action under Federal Rule of Civil Procedure 23;
- 11 B. That Wet Seal is found to have violated the provisions of the WARN
12 Act as to Plaintiffs and the WARN Class;
- 13 C. For an award, of damages or in equity, in the amount of unpaid
14 compensation, vacation and other benefits owed Plaintiffs and Class
15 Members.
- 16 D. An award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §
17 2104, and/or other applicable law; and
- 18 E. For such other and further relief, in law or equity, as this Court may
19 deem appropriate and just.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby requests trial by jury of all issues triable by jury pursuant to
FED. R. CIV. P. 38.

Dated: January 15, 2015

Respectfully submitted,

By: /s/ John P. Fiske

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